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4 westjcourt@gmail.com

5 **UNITED STATES DISTRICT COURT**
6 **NORTHERN DISTRICT OF CALIFORNIA**
7 **SAN JOSE DIVISION**

8 James West, pro se

9 Plaintiff(s),

10 Vs.

11 PBC Management LLC aka
12 Pacific Workplaces

13 Keith Warner, Managing Partner

14 Does 1-25 Defendants

) Case No.: **23-CV-03283**

) **[PROPOSED]**

) **THIRD AMENDED**

) **COMPLAINT**

) **DEMAND FOR JURY TRIAL**

) **Date: July 12, 2024**

) **Complaint filed June 30, 2023**

) Judge P Casey Pitts

15
16
17 **JURISDICTION AND VENUE**

18 1a) this court has original jurisdiction in this action under 28 section
19
20 1331, 1343 and 1367. This action is brought under the ADA Title III
21
22 and 42 USC sections 1981. This court has supplemental jurisdiction
23
24 under section 1367(a) over related state law claims and violations to
25
26 include but not limited to Unruh, breach of contract, negligence, fraud
27
28 and unfair business practices.

1 1b) Venue is appropriate in this Court because a substantial part of the
2 events I am suing about happened in this district.
3

4 1c) Intradistrict Assignment is the San Jose division because this
5 lawsuit arose in Santa Clara County; it should be assigned to the San
6 Jose Division of this Court.
7

8 **STATEMENT OF FACTS**

9

10 1) Plaintiff is a black gender nonconforming male with a disabling
11 anxiety disorder and a physical disability (acute lower back
12 pain). Plaintiff entered into a contractual agreement with PBC
13 Management LLC doing business in San Jose as Pacific
14 Workplaces for an evening and weekends renewable month to
15 month co working service agreement that commenced on
16 September 28, 2021.
17

18 2) Defendant Pacific Workplaces is actually managed by PBC
19 Management LLC and is the actual named defendant. PBC
20 Management LLC is not mentioned anywhere in the Client
21 Lease Agreement and Terms of Use and Pacific Workplaces is
22 not registered with the California Secretary of State.
23
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- 1 **3)** Defendant Pacific Workplaces is a business establishment in
2
3 California subject to the authority of the Unruh Civil Rights
4 Act.
5
- 6 **4)** Defendant Pacific Workplaces is a place of public
7 accommodation as defined by the Title III of the ADA Public
8 Accommodation because PBC Management aka Pacific
9 Workplaces is a facility operated by a private entity whose
10 operations affect commerce and falls within at least one of the
11 following categories as defined by 28 CFR 36.104: (5) other
12 sales or rental establishment and (6) other service
13 establishment.
14
15
- 16 **5)** Plaintiff does not know the true and names or capacities of the
17
18 persons or entities sued herein as DOES 1-25, inclusive, and
19
20 therefore sues such Defendants by such fictitious names.
21
22 Plaintiff is informed and believes, and upon such information
23 and belief alleges, that each of the DOE Defendants is in some
24 manner legally responsible for the damages suffered by
25
26 Plaintiff as alleged herein. Plaintiff will amend this Complaint
27
28

1 to set forth the true names and capacities of these Defendants
2 when they have been ascertained, along with appropriate
3 charging allegations, as may be necessary.
4

5
6 **6)** Plaintiff had contacted Pacific Workplaces on or about
7 September 24, 2021 by phone to verify price and availability
8 that the evenings and weekend co-working membership was
9 available and that Plaintiff could start his membership on that
10 day. Plaintiff was informed by the Pacific Workplaces staff
11 over the phone that Plaintiff could visit the office and sign up
12 the same day.
13

14
15
16 **7)** But when Plaintiff arrived as a black gender non confirming
17 male dressed in feminine attire was told to look elsewhere and
18 was denied the opportunity to purchase workplace membership
19 or services.
20

21
22 **8)** Plaintiff has also contacted Pacific Workplaces locations in San
23 Francisco and San Mateo and was also denied an opportunity to
24 contract for co working services prior to contacting the San
25 Jose location.
26
27
28

1 **9)** Plaintiff subsequently contacted community manager Kathy
2
3 Nguyen of the San Jose location who engaged Plaintiff by
4 negotiating and entering into a co working agreement to include
5 but not limited to copy, print, scan services, and continuous
6 wifi and internet services, access to microwave, refrigerator,
7 mini-oven and “all you can drink” beverage service of coffee,
8 tea etc. Plaintiff’s purchase of an evening and weekend plan
9 included the purchase of the beverage service and the beverage
10 service fee was included in the total purchase price of the
11 weekend and evenings membership.
12

13
14
15
16 **10)** Kathy Nguyen informed Plaintiff that the evening and weekend
17 membership plan was “fairly new to (San Jose) location.
18

19 **11)** During the contracting stage for a workplace membership,
20 between Plaintiff and Ms. Nguyen, Plaintiff was never
21 subjected to any screening criteria or inquiry into Plaintiff’s
22 business to determine “fit(ness).” The entire contract occurred
23 via phone and the internet. Plaintiff’s co-working agreement
24 required a monthly fee which was due on the first of the each
25
26
27
28

1 month with a grace period of 5 days. Plaintiff made all
2
3 monthly payments on time in according with the agreement.

4 **12)** Pacific Workplaces web site offers the option to purchase a
5
6 variety of office, co-working space, and conference room rental
7
8 plans with office services such as beverage service, mail box,
9
10 answering service, and copy, print and scan services.

11 **13)** Pacific Workplaces web site states: we provide private offices,
12
13 virtual offices, all access passes and meeting rooms through
14
15 Northern California but also in Reno, Las Vegas, and
16
17 Phoenix...this flexibility allows legal professionals to work
18
19 from different locations without being tied down to a long term
20
21 lease.

22 **14)** The availability of professional support services at Pacific
23
24 Workplaces can help attorneys focus on their core
25
26 activities...we offer receptionist services, mail and package
27
28 handling and call services.

- 1 **15)** Pacific Workplaces agreement paragraph 2 entitled License
2
3 states “This Agreement is the commercial equivalent of an
4 agreement for accommodations in a hotel.”
5
- 6 **16)** Also, Section 7 of the Workplace agreement requires Client and
7 Operator agree to comply with all laws prohibiting
8 discrimination based on person’s sex, age, race, color, national
9 origin, disability and or religion and similar statutes. The
10 section also prohibited sexual harassment.
11
- 12 **17)** Also, Section 10 Miscellaneous Provisions expressly states
13 under the section on applicable law: The Agreement shall be
14 governed and construed in accordance with the laws of the
15 State of California.
16
- 17 **18)** A copy of the Client License Agreement and House Rules are
18 attached to his complaint.
19
- 20 **19)** On or about September 30, 2021, Plaintiff made a request to
21 have the office “music turned off” in the co-working area
22 during evenings and weekend as the music was an annoyance
23 and nuisance. The co-working area contained an overhead
24 and nuisance. The co-working area contained an overhead
25 and nuisance. The co-working area contained an overhead
26 and nuisance. The co-working area contained an overhead
27 and nuisance. The co-working area contained an overhead
28 and nuisance. The co-working area contained an overhead

1 speaker located directly over the co working table which played
2 the music loudly and on pre-recorded loop. Plaintiff had to
3 repeatedly make this request from Sept 2021 to about May
4 2022 as center staff repeatedly failed to honor their
5 commitment to turn the music off after the shifts.
6
7

8
9 **20)** Private office, conference rooms and business
10 lounge/community kitchen had no speakers. The overhead
11 speakers played in the reception area and hallways thru out the
12 Pacific Workplaces site.
13

14
15 **21)** This arrange of having the music playing over head gave the
16 impression that the co-working area had been previously used
17 as a waiting area or open meeting area instead of a dedicated
18 workspace.
19

20
21 **22)** The co working area had a sign posted for co-working members
22 only but was bordered one side by private offices. The co
23 working area was an open area with two tables and four chairs.
24

25
26 **23)** The work tables were arranged in a manner that did not allow
27 for 6 feet of social distancing space and persons working at the
28

1 table were seated in a manner that was face to face. The tables
2 were not separated by any kind of plastic barriers. The lack of
3 social distancing, or barriers increased the likelihood of
4 COVID-19 transmission and other respiratory illnesses.
5

6
7 Additionally, Pacific Workplaces member agreement did not
8 allow for the access doors to the co working area to be open
9 and the air conditioning system was turned off after hours and
10 on weekends. The lack of fresh circulating air on evening and
11 weekends also increased the likelihood of COVID-19 and other
12 upper respiratory illnesses.
13
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15

16 **24)** Often Plaintiff was the only person working in the co working
17 area on evenings and weekends.
18

19 **25)** Plaintiff access hours were defined as from 5:15p to 7am
20 Monday thru Thursday and Friday-Sunday till 7am (continuous
21 access was permitted for the weekend).
22
23

24 **26)** During this access time period, staff had left for the work day
25 and Plaintiff was often alone with the exception of other
26 members who worked late on evenings or weekends. Plaintiff
27
28

1 had no staff to get immediate assistance with on any matter as
2 this was a design feature of Plaintiff's evenings and weekend
3 plan.
4

5 **27)** On November 18, 2021, Plaintiff received an email from the
6 Pacific Workplaces staff with instructions on how to make
7 coffee on evenings and weekends when staff were not present.
8 The email contained detailed instructions with jpg images.
9 These instructions are only provided to members with a
10 membership that included the "all you can drink beverage
11 service" after hours.
12

13 **28)** Plaintiffs' evening and weekend membership plan included the
14 beverage service fee as part of the total membership fee paid
15 each month.
16

17 **29)** On August 20, 2022, following a complaint by Plaintiff to
18 Defendant Warner about the lack of beverage service supplies,
19 Defendant Warner writes: There are certainly some
20 improvements we can make to make your after hours use of the
21 space better. Kathy (community manager) and her staff will be
22
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1 sure to leave more coffee supplies and cups when they close at
2
3 5pm.

- 4 **30)** Pacific Workplaces had video security and surveillance
5
6 cameras located thru out the suite including cameras posted in
7
8 the co-working area, community room, kitchen, and reception
9
10 areas. These cameras were operated and monitored by PBC
11 Management and staff.
- 12 **31)** Plaintiff continue to encounter problems with lack of beverage
13
14 supplies and started bring his own supplies.
- 15 **32)** Plaintiff encountered a number of problems when Plaintiff
16
17 arrived on evenings and weekends. Staff would not turn off the
18
19 overhead music as Plaintiff had requested and was informed
20
21 staff would do so. Often there was no coffee, coffee cups, teas
22
23 bags, or other supplies that were promised as part of the
24
25 Plaintiff prepaid “beverage service”. Also, often there were not
26
27 sufficient availability of other office supplies such as paper for
28 the copier or the copier had error messages making the copier

unavailable for use. Plaintiff had to repeatedly request or remind staff to provide these supplies.

33) Plaintiff often would encounter other members on evenings and weekends that would leave the door popped open and would entered the suite from the fire entrance setting off the building fire alarm.

34) Plaintiff observed on numerous occasions members would leave glasses and dishes in the sink which was prohibited by house rules, and members would not monitor or escort their clients thru out the suite. On one occasion, clients waiting in the reception area denied Plaintiff access to the men's room because a woman client could not find the women's room and a woman was utilizing the men's room instead.

35) Plaintiff observed member attorneys re-arranging the furnish for the purposes of conducting depositions by blocking the hallways and entrance and exit doors.

1 **42)** Posted on the doors and thru out the Pacific Workplaces suite
2
3 were signs which stated “STOP PLEASE DO NOT ENTER
4 THIS SPACE IF: you have been in close contact with a person
5 who is ill with the coronavirus, You have been in close contact
6 with a person who has recently been exposed to the corona
7 virus, You are currently experiencing a cough, shortness of
8 breath, sore throat, headache, or stuffy nose. ALL
9 EMPLOYEES, MEMBERS, AND VISTIORS ARE
10 REQUIRED TO WEAR A MASK AND PRACTICE 6 FEET
11 OF SOCIAL DISTANCING AT ALL TIMES, AND ADHERE
12 TO ANY OTHER GOVERNMENT MANDATED
13 RESTRICTIONS CURRENTLY IN PLACE.

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19 **43)** Another posted signed stating “TO ALL EMPLOYEES,
20 MEMBERS AND VISITORS OF PACIFIC WORKPLACES
21 COVID-19 PROTOCOLS: Due to the Covid 19 Pandemic,
22 additional precautions are being taken for the Health and Safety
23 of those that enter and use the space.
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44) On August 19, 2022, due to the addition of two additional co-working clients who identified as Japanese. Plaintiff emailed Keith Warner and made a request for modification to the co-working space and additional services. The email included a request to have the co-working tables separated by 6 feet to maintain appropriate social distance due to the addition of two additional members to the co-working area among other request. Defendant Warner denied Plaintiff request to modify the co working area to maintain the table six feet a part. Defendant Warner stating that “our intention is the keep the tables configured the same ... it’s a shared space.”

45) Despite this request also being made by the community manager MacFarlane, defendant Warner would not make any modification to the co working space to reduce the risk of expose to COVID-19 and other upper respiratory illness.

46) As a result, Plaintiff and two Japanese members voluntary worked out an arrangement to maintain social distancing. The Japanese member eventually terminated their membership.

- 1 **47)** Plaintiff observed that signs in the workspace indicated that
2 tables are to be used by one person per table.
3
- 4 **48)** On September 19, 2022, community manager Nguyen informed
5 Pac members she was leaving the company and the new
6 community manager would be Suman MacFarlane.
7
- 8 **49)** After Nguyen left, Plaintiff encountered additional problems at
9 Pacific Workplaces such as being denied access to the utensils
10 draw, the community kitchen being left in a mess with bbq
11 sauce smeared all over the counter, BBQ ribs and other food
12 left in the refrigerator to rot, leaving coke cans in the freezer to
13 explode, and the community sink was left clogged and backed
14 up with food waste.
15
- 16 **50)** Additionally, Plaintiff was denied access to the co working area
17 on the weekend January 7, 2023 due to building maintenance.
18 Plaintiff only received the email on Jan 3, 2023. Plaintiff had
19 no time to make other arrangement and was not offered a
20 discount for the inconvenience. Building management
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1 informed Plaintiff that Pacific Workplaces was given ample
2 advance warning.
3

4 **51)** Then, in March 2023 to May 2023, Plaintiff was repeatedly
5 double charged the monthly co-working fee. The explanation
6 Plaintiff received was that Plaintiff payment had not properly
7 been deposited into Pacific Workplaces account. Plaintiff was
8 not given any advance warning that there were payment
9 problems rather multiple charges showed up on Plaintiff
10 banking account. Because Plaintiff paid by check, Pacific
11 Workplaces staff re-submitted the same check for the same
12 monthly bill to Plaintiff's bank for payment. Plaintiff was
13 shocked and the bank charged the Plaintiff an overdraft fee.
14
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19 **52)** Plaintiff brought the matter to community manager MacFarlane
20 who assured Plaintiff that the overcharges would stop but the
21 overcharges continued.
22
23

24 **53)** On May 3, 2023, Plaintiff received an email from Defendant
25 Warner informing Plaintiff his last day will be on May 30,
26 2023. On May 30, 2023, Plaintiff received an email from
27
28

1 Defendant Warner complaining about the messy co-working
2 table. Defendant Warner did not identify who made the
3 complaint considering it was Memorial Day and only a few
4 people were in the suite on that day and Plaintiff was the only
5 co-working person using the co working space that day.
6
7

8
9 **54)** Defendant Warner's email stated: this is unacceptable ... you
10 cant work like this! Even if it is after hours and on weekends.
11 Defendant Warner did not explain what house rule or terms of
12 the membership agreement Plaintiff was to have broken. This
13 was the only complaint Plaintiff had received during his aprx 1
14 year and 9 month membership.
15
16

17
18 **55)** On June 28, 2023, Plaintiff emailed Defendant Warner
19 requesting a reasonable accommodation under California law
20 and Title III of the ADA public accommodation law so Plaintiff
21 may continue to access services at the Pacific Workplaces.
22 Plaintiff states in the letter, "I am a Pacific Workplaces evening
23 and weekend member with a disability and Plaintiff further
24 stated that I sometimes get overwhelmed.
25
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56) Plaintiff made the following accommodation request: (1) that I be able to continue my evening and weekend membership and be allowed to exercise “liberal use” of the co-working area; (2) Plaintiff be granted priority seating at the co-working as a person with a physical disability that precludes me from using the high chair; (3) that the co-working tables be separated so that the tables are at least six feet apart or some type of clear barrier be constructed ... having the tables at six feet apart complies with California non emergency COVID-19 guidelines and limits the spread of airborne diseases; community manager MacFarlane informed me that she also made the request to you sometime ago but no alterations have been made (4) that my membership be extended thru July 2023 so that we can allow time for you to consider my request for a reasonable accommodation and develop an appropriate solution without the need to termination. I further request that you notify me via email by June 29, 2023 by 11 am if you intend to extend my membership thru July 2023.

1 **57)** On June 28, 2023, at aprx 9:23p Defendant Warner emailed this
2
3 reply : "I feel like we have already made reasonable
4 accommodation by extending your membership by another
5 month. As I mentioned in my email on May 26, 2023, we will
6 not be extending beyond June 30, 2023
7

8
9 **58)** On June 30, 2023, Plaintiff sent an email to Scott Chambers,
10 Chief Operating Officer of Pacific Workplaces informing Mr.
11 Chambers of pending litigation regarding temporary restraining
12 order. Plaintiff states: James West a Pacific Workplaces
13 member has applied for a temporary restraining order to the
14 U.S. Federal court to stop manager at San Jose location after
15 negotiations failed over a requested reasonable accommodation.
16
17 Mr. Warner has or intends to termination James West
18 membership.
19
20
21

22 **59)** I am writing so that you can put me into touch with your
23 attorneys of record so I can forward my application to your
24 attorneys regarding the lawsuit and temporary restraining order.
25
26 Plaintiff received no reply from Mr. Chambers.
27
28

1 **60)** Again, On June 30, 2023, Plaintiff emailed Defendant Warner
2 stating: I have attached a medical verification and I once again
3 ask you to reconsider terminating my membership.
4

5 **61)** In the medical verification, Dr. Higgins writes: I am
6 submitting a reasonable accommodation request on behalf of
7 my patient James West. We are requesting the accommodation
8 in accordance with Title III of the ADA and California Civil
9 Rights laws. Mr. West has been diagnosed with an Anxiety
10 disorder which affects his ability to manage some projects
11 resulting in episodes of disorganization. I support Mr. West in
12 a request that he get the greatest support from you to maintain
13 his access to your facility to manage his projects. I request that
14 you modify some policies, practices or procedures that allow
15 Mr. West to continue to access the services at your company
16 without interruption or termination....
17

18 **62)** The other accommodation we request for Mr. West is that he
19 have access to chairs in the workplaces, that others in the
20 workplaces keep a distance of 6 feet in accordance with good
21 workplaces keep a distance of 6 feet in accordance with good
22 workplaces keep a distance of 6 feet in accordance with good
23 workplaces keep a distance of 6 feet in accordance with good
24 workplaces keep a distance of 6 feet in accordance with good
25 workplaces keep a distance of 6 feet in accordance with good
26 workplaces keep a distance of 6 feet in accordance with good
27 workplaces keep a distance of 6 feet in accordance with good
28 workplaces keep a distance of 6 feet in accordance with good

1 mitigation practices for respiratory diseases. This because Mr.
2 West is at increased risk of infection due to other conditions.
3

4 **63)** Plaintiff attached a copy of the June 29, 2023 medical
5 verification letter from Dr. Higgins to an email addressed to
6 Defendant Warner on June 30, 2023. Plaintiff received no
7 reply.
8
9

10 **64)** On July 5, 2023, Sarah Rowan, a law clerk assigned to Judge
11 Freeman, emailed copies of the complaint, urgent ex parte
12 application for temporary restraining order and permanent
13 injunction, Order to Show Cause and Judge Freeman's Order
14 re: application for temporary restraining order to Pacific
15 Workplaces notification email address at
16 info@pacificworkplaces.com as indicated in the Client License
17 Agreement and Terms of the Use in paragraph 1 section titled
18 Notices (otherwise referred to as the workplace contract).
19
20
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24 **65)** Due to a series of unfortunate events such as Judge Freeman
25 issuing her order the day before the 4th of July, Plaintiff being
26 involved in a rear end car accident on July 5 and Plaintiff
27
28

1 thinking that the email from Judge Freeman's law clerk was a
2 hoax and Defendants not responding to Judge Freeman's order
3 to file a response and Plaintiff receiving the actual order from
4 Judge Freeman after the July 7 via U.S. mail; Plaintiff was
5 unable to comply with Judge Freeman's order by the deadline.
6 As a result, Plaintiff's request for a TRO was denied.
7

10 **66)** Plaintiff vacated Pacific Workplaces premises on June 30, 2023
11 at 11:30p (no staff was present when plaintiff vacated the
12 premises) at the 111 Market Street and has been unable to
13 locate affordable, compatible, or suitable replacement work
14 place.
15

18 **67)** Plaintiff depends on access to public libraries with limited
19 access hours (especially during evening and weekends), no
20 beverage service, and no kitchen facilities). Also, Plaintiff is
21 playing substantially more for copy, print, and scan services at
22 Fed Ex and Staples.
23

26 **68)** The Pacific Workplaces location on Market Street in San Jose
27 provided unique features such as convenient access to federal
28

1 and state courts as well as convenient access to City of San Jose
2 municipal offices and the County of Santa Clara headquarters
3 located about a mile or two from the market street location.
4

5
6 **69) 42 USC SECTION 1981 RACE DISCRIMINATION**

7 **70) Plaintiff incorporate paragraphs 1- 68 as set for entirely**

8
9 **71) 42 USC of the US Code section: All persons within the**
10 **jurisdiction of the United States shall have the same right in**
11 **every State and Territory to make and enforce contracts, to**
12 **sue, be parties, give evidence, and to the full and equal**
13 **benefits of all laws and proceedings for the security of**
14 **persons and property as is enjoyed by white citizens ...**

15
16
17
18 **72) The term “make and enforce contracts” includes the**
19 **making, performance, modification and termination of**
20 **contracts and the enjoyment of all benefits, privileges,**
21 **terms, and conditions of the contractual agreement.**

22
23
24 **73) Plaintiff was subjected to intentional discrimination based upon**
25 **Plaintiff’s race as alleged throught out this complaint.**
26
27
28

1 services with PBC Management doing business as Pacific
2 Workplaces.
3

4 **79)** Plaintiff observed that white and Asian prospective client were
5 repeatedly granted same day and short term membership.
6

7 **80)** Further Plaintiff continued to be treated less favorably than non
8 black members and center staff.
9

10 **81)** Non black members violated the membership agreement by
11 being loud, creating a nuisance (setting off the fire alarm;
12 leaving doors ajar; blocking hallways with chairs, smoking in
13 the suite and violating house rules by leaving the dishes in the
14 sink in express violation of house rules) but where never
15 terminated for this conduct.
16
17

18 **82)** Plaintiff was subjected to harassment by non black members
19 when they would take all the coffee cups, plastic plates and
20 utensils so there was none for Plaintiff to use.
21
22

23 **83)** Plaintiff was repeatedly challenged when he arrived at the suite
24 by white and Asian members asking “do you have a key or who
25 are you here with?”
26
27

- 1 **84)** Plaintiff was subjected to ridicule for his work habits and
2
3 complaints were made to staff about Plaintiff that were not
4 accurate and Plaintiff was not promptly told about.
- 5 **85)** As a result, Plaintiff was viewed unfavorably by staff and
6 management;
- 7
8 **86)** Plaintiffs’ membership at Pacific Workplaces were terminated
9 by the Defendant Warner alleging Plaintiff’s “business was not
10 a good fit”
11
- 12 **87)** Plaintiff was informed that the only reason membership was
13 terminated was for non payment of fees. Plaintiff had paid all
14 fees on time and in fact was repeatedly overcharge co working
15 services during the period of March 2023 – June 2023.
16
17 **88)** As a further result, Plaintiff did not enjoy the benefits and
18 services of his contracted agreement due to his race.
19
- 20 **89)** **Title III ADA Failure to Accommodate (Reasonable**
21 **Accommodation)**
22
- 23 **90)** Plaintiff incorporate paragraphs 1- 88 as set forth entirely here
24
25
26
27
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- 1 **91)** Title III prohibits private places of public accommodations
2
3 from discriminating against individuals with disabilities.
- 4 **92)** 28 CFR 36.201(a) states: No individual shall be discriminated
5
6 against on the basis of disability in the full and equal enjoyment
7
8 of the goods, services, facilities, privileges, advantages, or
9
10 accommodations of any place of public accommodation by any
11
12 private entity who owns, leases, (or leases to) or operates a
13 place of public accommodation.
- 14 **93)** 28 CFR 36.302(a) : a public accommodation shall make
15
16 reasonable modifications in policies, practices, or procedures
17
18 when the modifications are necessary to afford goods, services,
19
20 facilities, privileges, advantages or accommodations to
21 individuals with disabilities.
- 22 **94)** Plaintiff alleges this claim against defendant PBC Management
23
24 and Defendant Warner both in his individual and official
25
26 capacity as managing partner for PBC Management.
27
28

- 1 **95)** PBC Management LLC aka Pacific Workplaces is a business
2
3 establishment renting out office, conference room and work
4
5 places servicing Arizona, Nevada, and California.
- 6 **96)** PBC Management LLC aka Pacific Workplaces is a place of
7
8 public accommodation subject to Title III of the ADA Public
9 Accommodation because PBC Mgmt LLC is a facility operated
10 by a private entity whose operations affect commerce and falls
11 within the categories of (5) an other sales or rental
12 establishment and (6) other service establishment as defined in
13 28 CFR 36.104
- 14
15
16 **97)** As defined in the Client License Agreement and Terms of Use
17
18 PBC Management aka Pacific Workspaces (Section 2 Licenses)
19 is the commercial equivalent of an agreement for
20 accommodation in a hotel. As such PBC Management qualifies
21 as a public accommodation under the ADA title 3.
- 22
23
24 **98)** Plaintiff requested on August 19, 2022 a modification to the co
25 working area that included maintaining work tables at least 6
26 feet a part; providing more floor level chairs. Defendant
- 27
28

Warner did not provide the request accommodation but instead offered to waive the 30 day notice so Plaintiff could go elsewhere.

99) Plaintiff continued to be the only co working member in the co working area on evening and weekends.

100) On May 3, 2023, Plaintiff received a termination notice from Defendant Warner. Defendant Warner stated “I don’t think your business and ours is good fit for each other. It’s time we parted ways.” On May 26, 2023, Plaintiff requested an extension to stay thru June 2023. Defendant Warner granted the extension.

101) After Plaintiff received the termination notice and an extension to stay, On May 30, 2023, Plaintiff received an email from Defendant Warner stating “this is unacceptable and Plaintiff must do better”. Plaintiff was sent a picture of documents spread out all over the co working tables. This is the only complaint Plaintiff received from management or staff about his work habits. The complaint was received after Defendant

1 Warner had decided to terminate Plaintiff's Workplace
2 agreement.
3

4 **102)** Plaintiff suffered an anxiety episode on that day resulting in the
5 messy table.
6

7 **103)** On June 28, 2023 , Plaintiff emailed Defendant Warner stating
8 that "I am writing to request a reasonable accommodation
9 under California law and Title III of the ADA public
10 accommodation code so that I may continue to access services
11 at Pacific Workplaces. As I need to manage large amounts of
12 documents from time to time I sometimes get overwhelmed.
13 The requested accommodation I am making is that I able to
14 continue my evenings and weekends membership; next
15 accommodation request is to be granted priority seating at the
16 co-working table as a person with a physical disability that
17 precludes me from using the high chairs; third accommodation
18 that the tables be at least six feet a part to comply with
19 California non emergency COVID-19 guidelines and limits the
20 spread of airborne disease and the fourth accommodation that
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1 my membership be extended thru July 2023 to allow time to
2 consider my requested accommodation. I further request that
3 you notify me via email by June 29, 2023 by 11am If you
4 intend to extend my membership.
5
6

7 **104)** On June 28, 2023 at 9:23pm via email Defendant Warner
8 writes "I feel like we have already made a reasonable
9 accommodation by extending your membership by another
10 month ... we will not be extending beyond 6/30/2023.
11
12

13 **105)** Plaintiff had been using the co working area without instance
14 since October 2021.
15

16 **106)** On June 30, 2023, Plaintiff sent Defendant Warner another
17 email requesting a reconsideration with medical verification
18 from his primary care physician stating "Mr. West has been
19 diagnosed with an Anxiety disorder which affects his ability to
20 manage some projects resulting in episodes of disorganization.
21 I (Dr Higgins) request that you modify some policies, practices,
22 or procedures that will allow Mr. West to continue to access the
23 service at your company without interruption or termination."
24
25
26
27
28

1 accommodate Plaintiff's disability. Defendants sent the email
2 on June 28, 2023 at 9:23pm from Defendant Warner denying
3 Plaintiff's requested accommodation.
4

5 **112)** On June 30, 2023. Plaintiff sent a second request for a
6 reasonable accommodation with medical verification to
7 Defendant Warner. Plaintiff received no reply.
8
9

10 **113)** Defendants discriminated against Plaintiff based upon
11 Plaintiff's disability by failing to make the requested reasonable
12 modification that was necessary to accommodate Plaintiff's
13 disability.
14
15

16 **114)** Plaintiff seeks injunctive relief as follows: reinstatement of
17 Plaintiff's workplace agreement; an order requiring the co-
18 working area tables be separated by six feet; priority or reserve
19 seating for persons with disabilities; declaration that
20 Defendants unlawfully discriminated against based on a
21 disability, an injunction against harassment or retaliation by
22 officers, staff or members of Pacific Workplaces and attorney
23
24
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28

1 fees and cost of suit and any other actions deemed justice by
2 the court.
3

4 **115) Unruh Civil Rights Claim**

5 **116) Plaintiff incorporate paragraphs 1- 114 as set forth entirely here**
6

7 **117) Civil Code section 52(a) provides that “[w]hoever denies, aids,**
8
9 or incites a denial or makes any discriminatory or distinction
10 contrary to section 51, 51.5, 51.6 is liable for each and every
11 offense for the actual damages and any amount that may be
12 determine by a jury, or court sitting without a jury, up to a
13 maximum of three times the amount of actual damages but in
14 no case less than four thousand dollars (\$4,000) and any
15 attorney’s fees that may be determined by the court in addition
16 thereto, suffered by any person denied the rights provided in
17 section 51, 51.5, or 51.6.
18

19 **118) Plaintiff alleges that PBC Management is a place of public**
20 accommodation and a business establishment providing
21 workplaces open to the public.
22
23
24
25
26
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28

1 **119)** Plaintiff incorporates the allegations of the title III claim and
2 section 1981 claim as the basis for the claims under the
3 California Unruh Civil Rights. By doing the things describe
4 thru out this complaint defendant PBC Management and
5 Defendant Warner violated the Unruh Civil Rights Act.
6

7
8
9 **120)** Plaintiff contacted PBC Management aka Pacific Workspaces
10 to contract for workplaces services
11

12 **121)** Defendant PBC Management is a business establishment doing
13 business in California;
14

15 **122)** Plaintiff is a member of a protected class covered by the act:
16 race, disability, and gender
17

18 **123)** Plaintiff was denied services and full and equal privileges
19 offered by Pacific Workplaces;
20

21 **124)** Plaintiff was subjected to harassment and discrimination
22 because of Plaintiff's race, disability and gender and Plaintiff's
23 contract was terminated due to Plaintiff protected status
24

25 **125)** Plaintiff suffered the lost of a work space resulting from the
26 termination and suffered further damages. Defendants PBC
27
28

1 Management and Defendant Warner conduct to terminate
2 Plaintiff's contract was a substantial factor in causing
3 Plaintiff's harm and damages.
4

5 **126)** Plaintiff is a person with a mental (anxiety disorder) and
6 physical disability (acute back pain) under California law is a
7 person with a disability as defined under California law Cal.
8 Govt Code section 12926 et al and California Civil Code
9 section 51 et al.
10

11 **127)** Plaintiff was discriminated against by PBC Management a
12 business establishment and Defendant Warner, managing
13 partner at PBC Management by denying and or failing to make
14 a requested reasonable accommodation or modification that
15 was necessary to accommodate Plaintiff's disability. Plaintiff
16 was informed in an email Plaintiff received from Defendant
17 Warner on June 28, 2023 @ 9:23pm of the denial of Plaintiff's
18 accommodation requests.
19

20 **128)** Defendants PBC Management and Warner denied or made a
21 distinction that denied full and equal advantages, privileges,
22
23
24
25
26
27
28

1 and services to Plaintiff based upon Plaintiff's disability and
2 therefore constituted a violation of California Civil Code 51 et
3 al.
4

5 **129)** Plaintiff is entitle to recover civil penalty(s) authorized by
6 California Civil Code section 52(a)
7

8 **130)** Defendants PBC Management and Warners acts were
9 intentional acts of discrimination based upon race, gender and
10 disability;
11

12 **131)** As a direct and proximate result Defendants wrongful actions,
13 Plaintiff suffered damages, all in the amount to be proven at
14 trial but exceeding the minimum jurisdictional limits of this
15 court.
16

17 **132)** Plaintiff seeks relief as set forth below.
18

19 **133)** Claim for Breach of Contract
20

21 **134)** Plaintiff incorporates paragraphs 1-132
22

23 **135)** Plaintiff and PBC Management representative Nguyen enter
24 into a valid co working agreement that in exchange for co
25 working space and services Plaintiff would pay a monthly fee.
26
27
28

1 **136)** Plaintiff by paying his monthly fee on time each month since
2 October 2021 performed his part of the contract and that all
3 conditions required for defendants performance occurred.
4

5 **137)** Defendants PBC Management and Defendant Warner breached
6 the contract by failing:
7

8 **138)** to provide beverage services on evening and weekends along
9 with complimentary cups and other condiments;
10

11 **139)** by allowing a nuisance to exist on the evening and weekend by
12 allowing annoying over head music to be played; other
13 members to have clients and guest wandering the suite
14 unattended; leaving the doors ajar; setting off the fire alarm
15

16 **140)** by failing to provide adequate notice of closure of the
17 workplaces on January 7 and 8 and failing to provide Plaintiff
18 with alternative work site or a discount;
19

20 **141)** by allowing non black members to engage in nuisance conduct
21 such as smoking, leaving dishes in the sink, leaving doors ajar,
22 blocking hallways and racial motivated harassing behavior
23
24
25
26
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28

1 **142)** by allowing race discrimination and harassment and failing to
2
3 accommodate Plaintiff with a qualified disability as required in
4 section of the 7 of the contract;

5
6 **143)** by repeatedly overcharging Plaintiff for monthly charges from
7 May 2023 to June 2023

8
9 **144)** by wrongfully terminating the contract in violation of federal
10 and California state law

11
12 **145)** As a result Plaintiff incurred the following damages and
13 expenses to include but limited to the following:

14
15 **146)** Purchasing noise reducing devices

16
17 **147)** Provide own supplies such as instant coffee, cups, and disposal
18 plates,

19
20 **148)** despite defendant contracting for cleaning services often times
21 Plaintiff had to clean the appliances in the community center
22 before use such as the refrigerator, microwave, and mini-oven
23 before use and wipe down counter tops and tables

24
25 **149)** incurred expenses to locate substitute and alternative work site
26 during temporary closure
27

1 **150)** and other compensatory and nominal expenses

2
3 **151)** Negligence Claim

4 **152)** Plaintiff incorporate paragraphs 1- 150 as set forth here in full

5
6 **153)** Plaintiff alleges that Defendants PBC Management and Warner

7 owned Plaintiff a duty to act with reasonable and due care as to
8
9 include but limited to the following:

10 **154)** To provide a workplace environment that was COVID 19

11 compliant with federal, state local laws, regulations, and orders
12
13 regarding the spread of COVID-19 and other respiratory
14
15 communicable diseases;

16 **155)** to modify the co working area to reduce the risk of spread of
17
18 COVID-19 and other respiratory communicable diseases due to
19
20 the lack of six feet social distancing, poor air circulation and
21 the present of members who exhibit respiratory symptoms and
22 would not wear a mask or leave the co-working area;

23
24 **156)** Defendants PBC Management and Warner was aware of this
25
26 risk and failed to act after Plaintiff and community manager
27 requested modifications to the coworking area;

1 **157)** As a result, Plaintiff suffered respiratory illness directly related
2
3 to exposure to members in the co working area and sort medical
4 care and was forced to take time off from working on his
5 project at the workplace;
6

7 **158)** Defendants breach the duty negligently and recklessly
8

9 **159)** Defendants negligent and/or reckless conduct was a substantial
10 cause of Plaintiff's harm and damages
11

12 **160)** Defendants conduct was a substantial factor in causing
13 Plaintiff's harm and damages; a respiratory illness that Plaintiff
14 contracted from a member while working in the co-working
15 area; lost work time; lost income;
16
17

18 **161)** As a result of Defendants' negligence, Plaintiff suffered special
19 and general damages in the amounts to be determine at trial
20

21 **162)** Plaintiff is informed and believes and alleges that in performing
22 the acts alleged, Defendants acted with oppression, malice and
23 conscious disregard of Plaintiff's rights, safety and well being;
24
25
26
27
28

1 **163)** Plaintiff is entitled to punitive damages to punish Defendants
2
3 and to deter such conduct in the future in an amount to be
4 determined at trial

5
6 **164)** Fraud Claim – Repeated Bank Charges

7 **165)** Plaintiff incorporate paragraphs 1- 164

8
9 **166)** Plaintiff alleges fraudulent misrepresentation against
10 Defendants PBC Management’s accounting team in the
11 processing of the monthly member fees.

12
13 **167)** On March 17, 2023, Plaintiff discovered he was charged twice
14 with the Feb 2023 check in March 2023 resulting in an overdue
15 charge in addition to Plaintiff having paid his March 2023 fee
16 with a March check;

17
18
19 **168)** On March 20, 2023, Plaintiff was sent false and misleading
20 copy of records indicating his payment had been voided.

21
22 **169)** Plaintiff via email and phone contacted community manager
23 MacFarland to explain to her that this records are wrong; that
24 he could provide copies of cancelled checks from his bank;
25
26
27
28

1 **170)** Plaintiff in talking to his banks managers could not determine
2 the bank account or financial institution the funds were being
3 sent to; Plaintiff demanded that this activity stop on or about
4 March 20, 2023 or Plaintiff would file a complaint with the
5 Santa Clara County District Attorney's consumer complaint
6 office;
7

8
9
10 **171)** Community Manager MacFarland repeatedly assured Plaintiff
11 that the accounting problem was fixed but Plaintiff continued to
12 get notices from the accounting team stating payments were not
13 processing properly;
14
15

16 **172)** Plaintiff also requested if he could make payments via money
17 order but was told that Pacific Workplaces did not accept
18 money orders;
19
20

21 **173)** After Plaintiff stated that he would file a complaint with the
22 Santa Clara County District Attorney Office; Plaintiff received
23 a email from Defendant Warner stating his membership was
24 being terminated;
25
26
27
28

1 **174)** Plaintiff alleges Pacific Workplaces staff intentionally
2
3 misrepresented the fact that Plaintiff's payments were not being
4 received or deposited into Pacific Workplaces account, and
5 presented Plaintiff with accounting records which showed
6 voided transactions enter by Pacific Workplaces staff. The
7 staff knew or should have known these records were false;
8 Plaintiff was repeatedly told the overpayment would stop but
9 the overpayment and attempts to double charge Plaintiff's bank
10 account continued into June 2023; Plaintiff relied on
11 assurances that this activity would stop or it was solved by the
12 community manager when in fact accounting staff continued to
13 double bill Plaintiff weeks after payments to Pacific
14 Workplaces had cleared Plaintiff's bank resulting in Plaintiff
15 incurring overdraft fee(s).

16 **175)** Plaintiff seeks damages and restitution as set forth in this
17 complaints
18

19 **176)** Plaintiff prays for relief as set forth below.

20 **177)** ADA Retaliation Claim
21

1 **178)** Plaintiff incorporate paragraphs 1- 176

2 **179)** Plaintiff alleges that Defendants PBC Management and Warner
3
4 engage in prohibited ADA retaliation activity

5 **180)** Plaintiff is an individual with a disability as defined in the ADA
6

7 **181)** Defendant PBC Management is a business subject to the public
8
9 accommodation requires as defined by section 2 entitled
10 License which states: This Agreement is the commercial
11
12 equivalent of an agreement for accommodation in a hotel.

13 **182)** Defendants' PBC Management and Warner had notice of the
14
15 disability when Plaintiff engaged in protected activity to
16
17 request a modification and a reasonable accommodation to
18
19 continue Plaintiff workplace agreement.

20 **183)** Defendants PBC Management and Warner acting his capacity
21
22 as Managing partner denied Plaintiff's request for an
23
24 accommodation and subsequently terminated Plaintiff
25
26 workplace agreement even when the accommodation request
27
28 was accompanied by medical verification by Plaintiff's primary
doctor

1 **184)** Defendants PBC Management and Warner further interfered
2
3 with Plaintiff in the exercise of his rights in his attempt to
4
5 obtain a temporary restraining order in the Northern California
6
7 federal court even though PBC Management, and Warner had
8
9 both actual and constructive notice of Plaintiff's application for
10
11 a restraining order to stay the termination but refused to
12
13 identify their attorneys or indicate who Plaintiff should forward
14
15 the TRO notices to.

16 **185)** Plaintiff engaged in protected activity under Title III of the
17
18 ADA in that Plaintiff requested a reasonable accommodation
19
20 which was denied by Defendants PBC Management and
21
22 Warner

23 **186)** Plaintiff subsequently engaged in protected activity under Title
24
25 III and requested a reconsideration of Defendant Warner and
26
27 PBC Management's decision to deny his accommodation but
28
this request include medical verification.

187) Plaintiff received no reply.

1 **188)** On June 30, 2023, Plaintiff emailed Scott Chambers, Chief
2
3 Operating Officer and agent for service of process as identified
4 on the California Secretary of State's business search web site
5 stating: James West Has applied for temporary restraining
6 order to the U.S. Federal Court to stop manager at San Jose
7 location after negotiations failed over a requested reasonable
8 accommodation. Mr. Warner has or intends to termination
9 James West membership. I am writing so that you can put me
10 into touch with your attorneys of record so that I can forward
11 my application to your attorneys regarding the lawsuit and
12 temporary restraining order. Plaintiff received no reply.
13

14
15 **189)** On July 5, 2023, Sarah Rowan, a law clerk assigned to Judge
16 Freeman emails copies of the complaint, urgent ex parte
17 application for temporary restraining order and permanent
18 injunction, Order to Show Cause and Judge Freeman's Order
19 re: application for temporary restraining order to Pacific
20 Workplaces notification email address at
21 info@pacificworkplaces.com as indicated in the Client License
22
23
24
25
26
27
28

1 Agreement and Terms of the Use in paragraph 1 section titled
2 Notice (otherwise referred to as the workplace contract).
3

4 **190)** Plaintiff's TRO was denied by Judge Freeman because Plaintiff
5 could not obtain the necessary service of process information
6 from Defendants prior to Judge Freeman's order.
7

8 **191)** Judge Freeman erred because she was not aware that both
9 actual and constructive notice of the TRO was giving by her
10 law clerk and thus Defendants were under notice to provide a
11 response to the application for TRO.
12
13

14 **192)** Thus Defendants refusal to provide appropriate contact
15 information for service of TRO before Judge Freeman order
16 resulted in Plaintiff's request for a TRO being denied.
17
18

19 **193)** Plaintiff seeks the same relief as outlined in his ADA
20 reasonable accommodation claim and other relief as appropriate
21 in the pray for relief section.
22
23

24 **194)** Private Nuisance

25 **195)** Plaintiff alleges Plaintiff leased a work space with Pacific
26
27
28

1 Workplaces and that Pacific Workplaces maintained the following
2 nuisances:

3 **196)** Fire alarm falsely going off cause members enter via the
4
5 emergency exit;

6 **197)** Rotten food left in the community kitchen that containmated
7
8 other members food

9 **198)** Loud and unreasonable noise from the overhead speakers

10 **199)** Roaches in the community kitchen; reception area, and
11
12 restrooms;

13
14 **200)** Dirty dishes left by staff and members

15 **201)** Smoking in the suite

16
17 **202)** Members popping open doors after hours

18 **203)** Members blocking the entrance and exit doors with chair for
19
20 their convenience

21
22 **204)** And Defendants failed to address these problems;

23 **205)** These problems were both a health, safety, security and fire
24
25 harazard;

26 **206)** These nuisance interfered with Plaintiff quiet enjoyment
27

- 1 **207)** Plaintiff did not consent to these nuisances
- 2
- 3 **208)** A reasonable person would be annoyed by this nuisances;
- 4 **209)** Plaintiff was harmed
- 5
- 6 **210)** And Defendant failure to stop these nuisances and conduct
- 7 created these nuisance was a substantial factor in causing
- 8 Plaintiff harm;
- 9
- 10 **211)** After complaining about these nuisances Defendant Warner
- 11 gave Plaintiff notice that his membership would be terminated
- 12 in retaliation.
- 13
- 14
- 15 **212)** Plaintiff seeks damages are described thru out these complaint
- 16 **213)** Unfair Business Practice
- 17
- 18 **214)** Plaintiff incorporate paragraph 1-212 as set forth here
- 19
- 20 **215)** Plaintiff alleges that PBC Management, staff and Defendant
- 21 Warner engage in unfair and deceptive acts or practices against
- 22 Plaintiff; that Plaintiff suffered loss of money and the acts of
- 23 PBC Management, staff and Warner were acts and deceptive
- 24 practices which caused Plaintiff's loss moneys and termination
- 25 of workplace agreement.
- 26
- 27
- 28

216) Plaintiff also alleges that all the allegations and claims contained in the preceding paragraphs constitute unfair business practices and support Plaintiff's unfair business practices claim.

217) Damages

218) Plaintiff prays judgment against Defendants as follows:

219) Compensatory damages, in the amount to be determined and according to proof at trial

220) Declaratory judgment against defendant for their wrongful conduct

221) Punitive damages in an amount to be determined according to proof at trial

222) Reasonable attorney fees and for cost of suit in this action

223) For a Cease and Desist order

224) For an order to reinstate Plaintiff's workplace agreement and

225) For such other and further relief as the court deems proper.

226) Plaintiff demands jury trial on all issues.

Date: July 12 , 2024

Plaintiff /s/ James West